

CHAPTER III ELECTIONS; ELECTED OFFICIALS; OFFICERS.

Section 3.00. (Charter election). The 1995 charter election shall be held on the second Tuesday in November of that year. Beginning in 1996, there shall be a biennial election for elective officers hereinafter provided, which election shall be known as the "charter election" and shall also be held on the second Tuesday in November of each even number year at such place within each ward as the common council shall designate.
(Enacted by Referendum May 17, 1994)

SECTION 3.001 Special elections for vacant offices. When a special election is required to fill a vacant office, the special election shall occur on a date established by the common council. The time allowed for the filing of candidates for such office shall be not less than 14 days. The special election, or a special primary election if needed, shall be held within 70 days of the deadline for filing. A special primary election shall be held if more than two candidates file for such office, with the two candidates receiving the most votes proceeding to the special election, except that if one candidate receives greater than 50% of all votes cast at the special primary election, that candidate shall be declared the winner and no special election shall be held. When a special primary election is held and no candidate receives greater than 50% of all votes cast, the special election shall be held not more than 53 days thereafter. (Amended by Ord. No. 3032, effective August 10, 1996; Ord. No. 3621, effective April 9, 2004; Ord. No. 3657, effective October 23, 2004; Amended by Ord. No. 4020, approved on May 16, 2011, effective August 15, 2011)

SECTION 3.01. (Elections; general provisions; ballots). All regular, primary and special elections shall be held as provided by the general laws of the State of Minnesota relating to elections except as herein otherwise provided.

Subd. 2. Partisan ballots shall not be used in any election for any city elective office.
(Amended by Ordinance 3804, 2/21/07)

SECTION 3.011. (Limitations of Consecutive Terms). Except as hereinafter provided, no person shall be eligible to hold the same elective office provided for in this Charter for consecutive terms which, when completed, would exceed twelve years. The word "term(s)" as used in this section shall refer only to those terms of office which commence on a date after the charter election of 1989. Additionally, no elective officer elected at the charter elections of 1994 or 1995 shall be limited for running for the same office until having served 12 consecutive years in that same office. (Enacted by Referendum November 8, 1988; Amended by Referendum May 17, 1994) *¹

SECTION 3.02. (Residency required). No person shall be eligible to hold any office provided for in this charter, who shall not be a qualified elector of the State of Minnesota, and who

¹ *Editor's note: In Minneapolis Term Limits Coalition v. Keefe, 535 N.W.2d 306 (1995), the Minnesota Supreme Court held that proposed amendment to city charter limiting terms of elected city officials would change "eligibility requirements" for local office in violation of the Minnesota constitution.

shall not have been a resident of the city, and of the particular ward within the city if the office sought is councilmember, for at least thirty days prior to filing for candidacy for the office.
(Amended by ordinance October, 1995)

SECTION 3.025. (Filing fees). A person filing an affidavit of candidacy for an elective office of the City shall pay a fee of \$50.00 at the time the said affidavit is filed with the City Clerk. In lieu thereof, a person may file a petition as provided in Minnesota Statutes, Section 205.13, subd. 4.
(Enacted by Ord. No 2475, effective February 7, 1986; Amended by Ord. No. 2587, effective July 8, 1988)

SECTION 3.026 (Officeholder Cannot be Employed by the City of Rochester). Any person who is elected to a city office cannot serve in that office and be simultaneously employed by the city. Any city employee who assumes an elected city office must simultaneously resign their employment by the city without any leave of absence from their employment and without any promise or guarantee of future employment by the city in any capacity. For the purpose of this section, city employee is defined to be any person who receives wages from any board or department or bureau or agency of the City of Rochester. After serving in office, such person shall be freely eligible to apply for employment by the city in any capacity and shall be equally considered with all other candidates for employment in accordance with the requirements applied to all candidates for employment.
(Enacted by Referendum November 5, 1996)

SECTION 3.03. (Oath required). Every person elected or appointed or who succeeds to any office under this charter, shall, before he enters upon the duties of his office, take and subscribe an oath of office, before some officer authorized to administer oaths, and file the same with the city clerk. Each such person shall also, before entering upon the duties of his office, give to the city such bond, if any, as hereinafter required, or as may be required by common council, the same to be approved by the common council and filed with the city clerk.

Section 3.04. (Mayor and Councilmember-at-large). The elective officers of said city shall be a mayor and councilmember-at-large. The mayor shall be elected at the charter election in 1995 and shall hold office for three years. In 1998 and each fourth year thereafter the mayor shall be elected at the charter election and shall hold office for a term of four years and until a successor shall be elected and qualified. The councilmember-at-large shall be elected at the charter election in 1996 and in each fourth year thereafter and shall hold office for a term of four years and until a successor shall be elected and qualified.
(Amended by Referendum May 17, 1994)

SECTION 3.05. (Councilmember). The elective officer of each ward shall be one Councilmember. The Councilmember from each of the odd numbered wards shall be elected at the charter election in 1995 and shall hold office for three years. In 1998 and each fourth year thereafter the Councilmember from each of the odd number wards shall be elected at the charter election and shall hold office for a term of four years and until a successor shall be elected and qualified. The Councilmember from each of the even numbered wards shall be elected at the

charter election in 1996 and in each fourth year thereafter and shall hold office for a term of four years and until a successor shall be elected and qualified.
(Amended by Referendum May 17, 1994)

SECTION 3.06 Vacancy in elective offices. Subdivision 1 Mayor. The common council shall call a special election if the office of mayor becomes vacant. The elected successor shall serve until the next regularly scheduled election for that office and until the successor is elected and qualified. The councilmember-at-large shall exercise all of the powers and discharge the duties of the office of mayor until the special election is called and the successor is elected and qualified. The councilmember-at-large while discharging the duties of mayor shall be styled the "acting mayor" and his acts in that capacity shall have the same force and validity as if performed by the mayor.

Subdivision 2. Councilmember-at-large. The common council shall call a special election if the office of councilmember-at-large becomes vacant. The elected successor shall serve until the next regularly scheduled election for that office and until the successor is elected and qualified. The common council shall elect from among its members an "acting councilmember-at-large" to discharge the duties of that position until the special election is called and the successor is elected and qualified.

Subdivision 3. Ward Councilmember. A vacancy in any ward councilmember position shall be filled as follows:

- (A) If the vacancy occurs more than one year prior to the next regularly scheduled general election, the council shall call a special election to fill the unexpired term of the vacant position. The elected successor shall serve until the next regularly scheduled election for that position and until the successor is elected and qualified. Until the time the vacancy is filled by a special election and a successor is elected and qualified, the common council may make a temporary appointment to fill the vacancy.
- (B) If the vacancy occurs less than one year prior to the next regularly scheduled general election, the council shall appoint a successor who shall serve until a successor is elected and qualified at that next general election. The elected successor shall serve for the unexpired term of the vacant position unless that position was scheduled to be filled at that election.

(Amended by Ord. No. 3032, effective August 10, 1996; Ord. No. 3749, effective May 20, 2006)

Subdivision 4. Waiver of special election to fill a vacancy. Notwithstanding any provision in the charter to the contrary, the common council may waive any special election requirement if Minnesota law will not permit the special election to be held on a date prior to the next regularly scheduled election for that position.

(Created by Ord. No. 4079, approved on July 23, 2012)

SECTION 3.07. (Removal of Elected officers). Whenever 50 or more registered voters of the City of Rochester shall file in the district court of Olmsted County a verified complaint charging that any elected officer of the city has been guilty of malfeasance or nonfeasance in the performance of the officer's duties, and setting forth the facts upon which such charges are based, the Judge of said district court, upon presentation of said complaint to him, may issue an order returnable before him, requiring the officer against whom the complaint is made to appear and answer said complaint and show cause why he should not be removed from office. Upon the return of such order, the court shall prescribe the course of pleading, the time of hearing, and the manner of procedure therein. Following the hearing, the court shall issue findings of fact and its conclusion as to whether the officer has committed acts constituting malfeasance or nonfeasance in the performance of the officer's duties. If the court finds that the officer's acts constitute malfeasance or nonfeasance in the performance of the officer's duties, the court's written findings shall be published and the common council shall call for an election of the voters to determine if the acts constituting malfeasance or nonfeasance constitute sufficient cause for the officer's removal from office. This removal election shall be city-wide if the officer is the Mayor or Councilmember-at-large, and shall be limited to a particular ward if the officer is a ward councilmember, and shall be held within 56-70 days of the publication of the court's findings. The officer shall be considered removed and the office vacant if a majority of the votes cast on the question are that the act. (Amended by Ordinance No. 3199, effective January 8, 1999; Amended by Ord. # 4020, approved May 16, 2011, effective August 15, 2011)

SECTION 3.08. (Change of residence).). Except as otherwise provided within the charter, any elective or appointive officer changing his residence from the city or ward for which he was elected or appointed under the provisions of this charter, and who shall fail to resume residence within the city or ward for which he was elected or appointed within ten days of notice from the common council shall be deemed to have vacated his office. (Amended by Ordinance No. 3369 – 12/12/2000; amended by Ord. # 4045 on December 19, 2011, effective April 2, 2012)

SECTION 3.081. (Failure to qualify). Except as otherwise provided within the charter, any elective or appointive officer who shall neglect or refuse to qualify within ten days of the beginning of the term for which the officer was elected or appointed, or to enter upon the discharge of the duties of the office within the designated time, shall be deemed to have vacated the office. (Enacted by Ord. # 4045 on December 19, 2011, effective April 2 , 2012)

SECTION 3.09. (Duty to successor). Any person having been an officer in the City shall, within ten days after termination or expiration of his term, deliver to the City all personal property, including but not limited to key cards, parking tags, electronics and other effects of every description in his possession, belonging to the City, or pertaining to the office he may have held. If he fails to do so he shall forfeit and pay to the City \$100, in addition to all damages caused by his neglect or refusal so to deliver, and the City may recover the possession of such items or their reasonable value in the manner prescribed by the law in case of the unlawful detention of personal property. (Amended by Ord. # 4045 on December 19, 2011, effective April 2, 2012.)

SECTION 3.10. (Vacancy, elected officials). (Repealed by Ord. No. 3032, effective August 10, 1996)

SECTION 3.11. (Certain acts prohibited). Any officer or employee of the city who shall willfully or negligently violate any of the provisions of this charter, or convey any of the public property to his own use, or knowingly permit any other person to so convert it, shall be guilty of a misdemeanor, and shall, upon a conviction be punished, when a punishment is not otherwise provided by law, as misdemeanors are punishable by the criminal laws of the state; and, on conviction thereof, he shall forfeit his office and shall be liable to the city for any amount of loss or damage suffered by reason of such violation of law.